

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MILES DAVID LEWIS,

Defendant-Appellant.

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UNPUBLISHED

March 2, 2010

No. 287770

Wayne Circuit Court

LC No. 08-003253-FC

Before: Gleicher, P.J. and O’Connell and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317, first-degree felony murder, MCL 750.316(1)(b), felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b. He was sentenced to prison terms of 40 to 80 years for the second-degree murder conviction, life without parole for the first-degree felony murder conviction, two to four years for the felonious assault conviction, and two years for the felony firearm conviction. We affirm.

A.

James Campbell, a codefendant who pleaded guilty to 2<sup>nd</sup> degree murder, testified that on the morning of February 12, 2008, defendant called his cellular telephone wanting to buy an ounce of marijuana. Campbell testified that he told defendant he would try to find him an ounce, and that he contacted the victim, Andre “Jack” Wright, who agreed to sell an ounce to defendant for \$600.

Campbell said he called defendant and told him he found an ounce for \$600, and defendant did not complain about the price. Wright called about an hour later and he and Campbell agreed to meet at a grocery store that Wright chose. Campbell said he called defendant to pick him up so they could go buy the marijuana, and when defendant picked him up, his younger brother Donovan, who was 19, went with him.

Campbell testified that he was carrying his Glock in his shallow right coat pocket. He said he had owned the gun a couple months and carried it for protection. Campbell believed that the gun was not visible, and that no one knew he had the gun. He said he did not see if defendant had a weapon.

According to Campbell, Wright called to change the meeting to the Coney Island on Wyoming. Defendant stopped at a gas station, where both he and his brother went inside. Campbell returned to sit in the backseat and his brother Donovan got in the front passenger seat. Campbell testified that they arrived at the Coney Island at about 7:30 p.m., and that Wright called him again to say he pulled in behind them and that Campbell and the person who wanted the marijuana should come to Wright's car. Campbell and defendant exited defendant's vehicle and got into Wright's car.

Campbell testified that he got in the car behind Wright, who was in the driver's seat, and defendant got in the backseat next to him. Wright's nephew, whom Campbell knew from the club where he had first met Wright, was in the front passenger seat. Campbell testified that Wright handed him a brown paper bag with his left hand over his right shoulder and repeated that the price was \$600. Campbell looked inside the bag, saw a plastic bag of marijuana, which looked like an ounce, and gave the bag to defendant, who looked at it and put it in his pocket without saying anything. Campbell said no guns had been drawn and he expected defendant to pay Wright. He said defendant reached into his pocket and he expected money to come out but instead defendant brought out a pistol, a revolver, said, "How about this, nigger," and fired at Wright. Campbell said he did not see the bullet hit Wright. He said he opened his unlocked door and ran back to defendant's car, and at some point heard about two more shots from Wright's car. Campbell testified that this was the first time he saw defendant with a weapon. Campbell denied pulling out or using his Glock, and testified that Wright did not point a weapon or threaten defendant, and he did not see Wright's nephew pull out a weapon. He did not feel like Wright and his nephew were about to rob them. He testified that nothing prevented defendant from opening the door and running, and defendant did not run alongside him back to defendant's car. Campbell admitted he did not see everything Wright was doing with his hand at all times. He testified that defendant shot within seconds after he gave defendant the marijuana. He said he last saw the bag when defendant put it in his pocket.

Campbell testified that he went back to defendant's car because that was where his brother was. He said he planned to leave without waiting for defendant and told his brother to get in the driver's seat and drive away, but before his brother could do so, defendant got in the car. Campbell said defendant pulled away and told them they better not say anything, and that he perceived this as a threat and was afraid defendant would shoot him. He testified that he and his brother jumped out of the car after about a mile. Campbell said he never saw defendant again and did not call him or receive a call from him.

Campbell testified that he realized he did not have his Glock when he got in defendant's car, but he said nothing to defendant and did not tell his brother until they got home. Campbell explained that he was shook up and afraid of defendant, and it would not have been smart to tell defendant he no longer had protection from defendant, who had a gun. Campbell said he believed he dropped it, and he identified a gun in a photograph as his. He later testified that it fell out of his pocket when he jumped out. He testified that he did not see a gun fly into the air and land in the backseat.

#### B.

Donovan Campbell testified that he knew defendant a couple years because defendant cut his hair. He said he never saw defendant sell marijuana or heard that he did, but he and his

brother smoked marijuana with defendant. Donovan testified that defendant picked up him and his brother on February 12, 2008, at the corner grocery store near their home. He said his brother wanted him to ride with him and defendant but did not tell him where they were going. Donovan said they rode around while his brother called to find out where they were meeting, and they stopped at a grocery store because they thought they were meeting there. He testified that, after they stopped at a gas station, he came out first and got in the front seat and his brother got in back. Donovan said his brother told him he was trying to get weed for defendant. Eventually, Donovan said they pulled into the Coney Island and the person they were meeting called to say he was there.

Donovan testified that he stayed in the car. He said he did not see a gun on defendant or his brother while they were in the car or when they got out, and he did not see where they went. He testified that he was talking on his telephone when he heard gunshots. He said he looked back and saw nothing, then he looked in the mirror and saw his brother running. Donovan said he heard four shots, one after another, all before he saw his brother running. He said his brother got in the backseat, looking frantic and scared, and told him to pull off, to hurry up and leave defendant. Donovan said he tried to get out of his seatbelt so he could move to the driver's seat, but defendant walked up and got in the driver's seat. He said he would have driven off if he had the chance.

Donovan testified that he could see the handle of a revolver hanging out of defendant's pocket, so he thought he just shot someone or something. He said defendant was going crazy, saying they could not say nothing; he could not really understand what defendant was saying. Donovan said he was scared of defendant because he had a gun and was in an uproar. He said defendant did not say someone pulled a gun on him or he had to shoot because someone threatened him. He testified that he never saw defendant with a revolver before. Donovan said defendant turned down a side street, his brother told him to hop out and run when they stopped at a light, and they got out and ran to their grandmother's house. He said defendant did not say anything else and he and his brother did not talk after defendant got back in. He said he never saw a brown bag or bag of marijuana that night.

After they ran to their grandmother's home, Donovan said his brother, still shaken and scared, told him defendant shot someone in the head. Donovan said his brother told him defendant threatened him but he did not know exactly what defendant said. He said his brother also told him he dropped his gun but did not say where. Donovan said he thought it was a nine-millimeter; he saw it in his brother's possession some days earlier. He identified a gun in a photograph as his brother's. Donovan said his brother never told him anyone else but defendant pulled a gun. He testified that he did not have any more contact with defendant and thought his brother also did not. He admitted he never said in any statement that his brother told him he dropped his gun. He testified that his brother did not carry his gun, but he guessed he did that night.

Wright's 20-year-old nephew, Reginald Underwood, testified that he was present a couple times before when Wright sold marijuana to people.

Underwood testified that he met Campbell at an after hours nightclub with Wright. He admitted his uncle's business was selling marijuana and Wright was at the club to make contacts. He said his uncle had him store Campbell's telephone number in his telephone because Wright

did not have his. Underwood said he called Wright at about 6:40 p.m. or 7:00 p.m. on February 12, 2008, because he wanted his uncle to take him to Coney Island to eat. Underwood said his uncle told him he had to make a run, which could mean a lot of things. Underwood testified that he went to Wright's house and got into his white Corsica. He testified that, when they arrived at the Coney Island, he was about to get out when Wright told him he had to handle some business and wanted Underwood to sit with him. Underwood said he thought his uncle was going to sell some weed. He said his uncle, like anyone, did not want to be alone on a deal with someone he did not really know. He said Wright did not say he was going to rip them off or shoot them.

Underwood testified that Wright grabbed a brown bag out of the glove box, then made a telephone call and told someone their car was right behind them. Underwood said two guys got out of a silver Chrysler in front and to their left. He said they got out of both sides of the car, and he thought both got out of the back. Underwood testified that Campbell got in behind his uncle and defendant got in behind him; they were shoulder to shoulder with no space between them in the back. He said he did not know defendant but recognized Campbell and verified that they met at the club. Underwood testified that his uncle said something like, "check this out," and passed the bag to Campbell with his left hand. Underwood testified that Campbell opened the bag and smelled it, then passed it to defendant. Underwood said he was really looking only at his uncle and Campbell, because he thought they were doing the transaction.

Underwood testified that Wright said it was going to be \$600, and defendant said "what about this, nigger" and whipped out a pistol and pointed it at Wright. Underwood said Wright did not say, "six hundred or your life" or otherwise threaten defendant. Underwood said he also did not hear anyone complain about price. He testified that, when defendant fumbled in his pocket, he thought money was about to come out, but instead it was a little black revolver, a .38 caliber or something like that. Underwood testified that the gun went off a second after defendant pulled it up, he saw a bullet hit his uncle's hand, and Underwood grabbed the unlocked door, got out, and ran. Underwood said his uncle did not have time to pull out a gun, and he would have seen if his uncle had. He estimated that defendant and Campbell were in the car less than three minutes when the shooting occurred; he said everything happened really fast. He said defendant's gun was close enough for him to reach out and touch, and he felt the wind as the bullet came right past his face. He testified that he did not stay long enough for defendant to turn the gun toward him.

Underwood testified that he did not look back, he just ran for his life, as he heard about three more shots and thought they were shooting at him. He identified a baseball hat shown in a photograph on the ground to the right of Wright's car; he said it fell off when he hopped out. He said he ran behind the Coney Island onto a lady's back porch, where he called 911 and reported that his uncle was shot and he did not know if the guys were looking for him. Underwood testified that, when he saw police lights at least 10 to 15 minutes later he ran back and a cop threw him into a car.

Underwood testified further that he had seen his uncle with a gun in the past, but he did not have one that day; he saw the gun on his uncle's bed when they left. He said Wright's gun was a little nine millimeter. Underwood said he also did not have a gun, and he did not see a Glock that night. He testified that his uncle never said he planned to rob anyone, and he expected to eat and go to his uncle's house after the deal.

C.

Defendant testified that his usual marijuana supplier was unavailable, so he called a couple people including James Campbell. According to defendant, Campbell was going to direct him to his supplier to buy one ounce, and he believed the price was going to be \$300. He testified that he had purchased that amount from other people and, although he could use a scale, he could pretty much calculate the amount with his eyes. He said he brought \$300 in cash in his pockets and a handgun for protection, to stop any threat on his life. Defendant said the drug atmosphere required him to be around dangerous or desperate people. He testified that he did not go with a plan to shoot or rob Wright or steal marijuana from him.

Defendant agreed that he heard Campbell testify that the price for the marijuana was \$600, but he thought the price was understood and there was no discussion about it after he picked up the brothers.

Defendant said Campbell told him where to go and he did. He agreed that it was around 7:30 p.m. when he got to the Coney Island. Although his face was not identified in any surveillance tapes, he did not deny being there. He testified further that he got out, went to the Corsica with Campbell, and got in behind the passenger while Campbell got in behind the driver. Defendant said the guy asked Campbell if defendant was the one who wanted the product, and Campbell said he was.

Defendant testified that the guy pointed a gun at him and said he should give him all his money or he would shoot. He said it looked like an automatic handgun, like a nine-millimeter Glock-type gun, but he only saw the front. He said it was in the man's right hand and pointed at defendant's head. Defendant testified that he felt like he was going to die. Defendant said his hands were in his jeans pocket, with his left hand on his money and his right on his gun. Defendant testified that he pulled out his gun as fast as he could and started shooting. He said he shot the guy and did not know where the other passenger went. He testified that he fired within seconds, he just reacted and pulled the trigger to stop the assault on his life. He said he believed that if he reacted differently, he would have been killed, or shot, or heavily hurt. He explained further that he had been shot before. He said he did not have time to react and did not know or care whether the doors were unlocked because a deadly weapon was pointed at him. Defendant said he did not know where the gun that Wright held came from or what happened to it; he did not take it with him. He said he also did not take any marijuana, and Wright did nothing with his hands regarding the marijuana defendant was there to buy.

Defendant admitted that the revolver found was the one he used. He explained that it was kept in a sterilizer box he used as a licensed barber hairstylist. He agreed that Campbell had the same reason he did for carrying a gun, to protect himself. He admitted he did not know if Campbell had a gun that night; however, he testified that the younger brother said he did not and they were real close. Defendant said he had no problems with Campbell before that night and he did not know Underwood.

Defendant denied that Wright took marijuana from the glove box and passed it back. He said Wright said, "give me your money," with his gun in his hand. Defendant said he did not see Wright, just the gun pointed at his face. He explained that he knew it was not Underwood pointing the gun because it was from the direction of the driver's seat. He said he also could not

tell how Wright was sitting and did not get a good look at his face. He explained that he was scared and just saw the gun and heard Wright threaten to shoot him if he did not give him his money.

Defendant said he did not recall any shots from Wright's gun and was not hit, but could not say whether Wright fired. He also did not know how many times he fired. He said he did not know how long it took to get his gun out after Wright pulled his gun and did not know why he was not shot.

Defendant estimated that it was a couple minutes between when he got in Wright's car and when Wright pulled a gun and testified further that it seemed like right away. He testified that he felt legally entitled to shoot. Defendant said he did not remember Campbell and Underwood talking about knowing each other from the club. He claimed nothing was said about the marijuana except Wright's question about whether he was the one who wanted it, no one said it was \$600, and there was never a bag of weed in the car.

Defendant testified that, after he shot Wright, the only thing he saw was the back of the passenger seat. Defendant said he never did collect himself and did not know if it was a short or long time before he got out. He admitted he said nothing to the Campbell brothers about having to defend himself. Defendant said he could not tell how long he sat in his own car before he pulled off. He agreed that he did not stay to talk to police and did not go to the police station later. Defendant said he had no more contact with Campbell because he had negative thoughts about him.

Defendant agreed that Wright could have gotten into his car to do the deal. He testified further that he did not know how the gun got in Wright's backseat. He agreed that the photograph of a gun in the backseat looked like the one pointed at him. He said he did not wrestle the gun from Wright or see Campbell wrestle the gun from him.

#### D.

Defendant first argues that there was insufficient evidence that he did not act in self-defense. When a defendant introduces evidence that he acted in proper self-defense, the prosecution bears the burden of proving beyond a reasonable doubt that he did not. *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005), quoting *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). When reviewing a sufficiency of the evidence claim, we must make all reasonable inferences and credibility choices that support the jury verdict, *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), and must not interfere with the role of the trier of fact in determining witness credibility and the weight of the evidence. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004); *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). Whether a defendant acted in self-defense is a question of fact for the jury. *People v Prather*, 121 Mich App 324, 330, 332; 328 NW2d 556 (1982). There need only be sufficient evidence for a rational jury to find that the defendant's belief of imminent harm was either unreasonable or dishonest. See *Fortson*, 202 Mich App at 20.

In the present case, two witnesses testified that defendant was not threatened and that he was the only person to pull out and discharge a gun. In addition, evidence that the victim was shot from back to front and right to left, and the evidence that the only other handgun recovered

in the vehicle was in the backseat, consistent with Campbell's testimony that he believed the gun fell out of his pocket, constituted sufficient evidence for a rational jury to find that defendant's testimony was false and he did not honestly believe he was in imminent danger.

Defendant next argues that his right to a fair trial was abridged because the trial court instructed the jury regarding flight, which defendant believed was inapplicable to the facts. We review for an abuse of discretion the trial court's determination whether jury instructions apply to the facts of a case. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). Fleeing the scene, leaving the jurisdiction, running from police, and escaping custody are all considered flight. See *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995), quoting 29 Am Jur 2d, Evidence, § 532.

The prosecution argued that defendant's decision to drive away from the scene of the crime, his failure to contact police, and his driving 100 yards in a parking lot before stopping for a police car with emergency lights on, all constituted evidence of flight. Even if we assume that this instruction was given in error on the basis that there was insufficient evidence of flight to establish consciousness of guilt, nevertheless, the giving of the instruction was not outcome determinative. *People v Lukity*, 460 Mich 484, 493-494; 569 NW2d 607 (1999). The jury heard the evidence and presumably understood the instruction which also indicated that the purported flight evidence did not necessarily prove guilt, and that persons could run or hide for innocent reasons. There is no reason to believe the jury placed too much weight on the evidence or the instruction, in light of the eyewitnesses and other evidence. Compare *People v Cutchall*, 200 Mich App 396, 401; 504 NW2d 666 (1993). The trial court did not abuse its discretion.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ Peter D. O'Connell  
/s/ Kurtis T. Wilder